

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

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|-------------------------------|---|-------------------------------------|
| TIMOTHY PRESTON ELDER, |) | CASE NO. 7:13CV00500 |
| |) | |
| Petitioner, |) | |
| v. |) | ORDER |
| |) | |
| |) | |
| HAROLD W. CLARKE, |) | By: Michael F. Urbanski |
| |) | United States District Judge |
| Respondent. |) | |

In accordance with the accompanying memorandum opinion, it is hereby

ADJUDGED AND ORDERED

as follows:

- (1) The petitioner's motion to amend to add an exhibit (ECF No. 27) is **GRANTED**;
- (2) The respondent's motion to dismiss (ECF No. 11) and the petitioner's motion for evidentiary hearing (ECF No. 21) are **DENIED**;
- (3) The petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, is **DISMISSED WITHOUT PREJUDICE** as to all claims except the petitioner's contention that retained counsel failed to file a petition for appeal;
- (4) Based on the court's conclusion that the petitioner was deprived of his constitutional right to the effective assistance of counsel on direct appeal by counsel's failure to file a petition for appeal and failure to communicate with the petitioner, the court **GRANTS** the writ of habeas corpus to the limited extent of allowing petitioner to file a belated petition for appeal

with the Court of Appeals of Virginia, within sixty (60) days from the entry of this Order; and

- (5) This action is **DISMISSED** and stricken from the active docket of the court.

Entered: September 8, 2014

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge